

Ruling 2001-01

Vermont Department of Taxes

Date: January 22, 2001

Written By: Danforth Cardozo, III, Attorney for the Department

Approved By: Janet Ancel, Commissioner of Taxes

You have requested a ruling as to whether the above named trust is subject to Vermont income tax. This ruling relies on your representations contained in your letter to Brenda Carpenter of July 13, 2000 and the copy of the Trust instrument provided therewith.

The [Name] Revocable Trust effective [date] (hereafter referred to as the "Trust") was created by the grantor, [Name] (hereafter the "Grantor"), on [date]. The initial trustee was the Grantor. He died [date]. He was and had been an [State #1 (other than Vermont)] resident both when the Trust was created and the time of his death. The Trust was created in [State #1]. The Grantor's estate is filing an [State #1] estate return for his estate. The current and successor trustee of the Trust as named in the trust instrument is the [Bank] of [City], Vermont (hereafter the "Successor Trustee").

The initial beneficiary of the Trust was the Grantor. After the death of the Grantor, the terms of the Trust directed the Successor Trustee to create a subtrust called the [Name] Trust (hereafter the "Subtrust"). The remainder of the Trust estate was payable to the Subtrust. [Name] is the son of the Grantor, is the sole beneficiary of the Subtrust during his life, and is a resident of [State #2 (other than Vermont)]. He is not entitled to any distributions from the Subtrust until the year 2018.

Vermont imposes an income tax for each year upon the income received by every trust. 32 V.S.A. § 5822.

According to the statutory definitions, a "Resident individual or trust" means, for any taxable year, an individual or trust qualifying for residency in this state during the entirety of that taxable year. 32 V.S.A. § 5811(13). A "Nonresident individual or trust" means, for any taxable year, an individual or trust not qualifying for residency in this state during any part of that taxable year. 32 V.S.A. § 5811(9). For trusts, "Residency" is defined in pertinent part as follows:

(B) A trust qualifies for residency in this state if it is...

(ii) a trust, or portion of a trust, consisting of property of:

(l) a person domiciled in this state at the time such property was transferred to the trust, if such trust or portion of a trust was then

irrevocable, or if it was then revocable and has not subsequently become irrevocable; or

(II) a person domiciled in this state at the time such trust, or portion of a trust, became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable.

32 V.S.A. § 5811(11)

A resident trust pays tax based on its Vermont income, which is defined as its federal adjusted gross income less certain items. 32 V.S.A. § 5923(a); see 32 V.S.A. § 5811(1) (defining "adjusted gross income"). A nonresident trust pays tax based upon its Vermont income, which consists of the following items of income to the extent they are required to be included in its adjusted gross income:

(1) Rents and royalties derived from the ownership of property located within this state;

(2) Gains from the sale or exchange of property located within this state;

(3) Wages, salaries, commissions or other income (excluding military pay for full-time active duty with the armed services and also excluding funds received through the federal armed forces educational loan repayment program under 10 U.S.C. chapters 109 and 1609; and also excluding the first \$1,500.00 of military pay for unit training assemblies in the state to National Guard personnel who were enlisted for the full calendar year, attended all 48 unit training assemblies as certified by the federal Defense Finance and Accounting Service Military Leave and Earnings Statement, DFAS Form 702, or for whom the adjutant general certifies that the taxpayer completed all unit training assemblies of his or her unit during the training year, and who had a federal adjusted gross income of less than \$47,000.00 in the prior tax year) received with respect to services performed within this state; and also excluding income received for a dramatic performance in a commercial film production to the extent such income would be excluded from personal income taxation in the state of residence;

(4) Income (other than income exempted from state taxation under the laws of the United States) derived from every business, trade, occupation or profession to the extent that the business, trade, occupation or profession is carried on within this state including any compensation received

(A) under an agreement not to compete with a business operating in Vermont;

(B) for goodwill associated with the sale of a Vermont business; or

(C) for services to be performed under a contract associated with the sale of a Vermont business, unless it is shown that the compensation for services does not constitute income from the sale of the business;

but excluding income received for a dramatic performance in a commercial film production to the extent such income would be excluded from personal income taxation in the state of residence;

(5) Income that was previously deferred under a nonqualified deferred compensation plan and that would have previously been included in the taxpayer's Vermont income if it had not been deferred, and income derived from such previously deferred income.

32 V.S.A. § 5823(b).

It appears from the facts as presented that the Grantor was not domiciled in Vermont at the time he transferred property to the trust. At that time, the Trust was revocable and did not subsequently become irrevocable. 32 V.S.A. § 5811(11)(B)(ii)(I). Presumably, the Trust became irrevocable at the time of the Grantor's death. However, the Grantor was not domiciled in Vermont at the time of his death. 32 V.S.A. § 5811(11)(B)(ii)(II). Under either scenario, the Trust is a nonresident trust as defined by 32 V.S.A. § 5811(9). As a nonresident trust, it is liable for Vermont income tax, if any, only on those items of income listed under 32 V.S.A. § 5823(b). This ruling expresses no opinion concerning whether the Subtrust is subject to Vermont income tax.

This ruling is issued solely to your business and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.